IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :12.10.2007

CORAM

THE HON'BLE MR. JUSTICE F.M. IBRAHIM KALIFULLA
and
THE HON'BLE MRS. JUSTICE R. BANUMATHI

W.A.No.3346 of 2003
and
W.A.M.P.Nos.5365 and 5366 of 2003

M.Kanagasabapathy ..Appellant/3rd Respondent in WP 10291/03

Vs.

1.The Special Officer
S.390, Pothanoor Primary Agricultural
Cooperative Bank Ltd.,
Pothanoor, Paramathivelur Taluk
Namakkal District 638 181. ..Respondent/Petitioner in WP 10291/03

2.The Appellate Authority under the
Payment of Subsistence Allowance Act/
Deputy Commissioner of Labour
Salem-7. ..Respondent/1st Respondent in WP 10291/03

3.The Authority under
The Payment of Subsistence Allowance Act/
Assistant Commissioner of Labour,
Salem -7. ...Respondent/2nd Respondent in WP 10291/03

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For Appellant : Mr.K.Premkumar
For Respondent No.1 : Mr.M.S.Palaniswamy
For Respondents No.2 & 3 : Mr.P.S.Raman
Additional Advocate General
assisted by Mr.M.Dhandapani, Special Government Pleader

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Writ Appeal preferred under clause 15 of letter patent appeal against the order of the Hon'ble Mr.Justice K.Raviraja Pandian dated 13.8.2003 and made in WP 10291/03 presented to this Court under Article 226 of the constitution of India to issue a writ of Certiorari to call for the records in P.S.A.5/2002 on the file of the Deputy Commissioner of Labour Salem-7, by his order dated 24.02.03 and quash the same.

JUDGMENT

F.M. IBRAHIM KALIFULLA, J.

The appellant is aggrieved against the order of the learned single Judge, dated 13.8.2003 passed in W.P.No.10291 of 2003.

2. The issue relates to payment of subsistence allowance payable to the appellant for the period of suspension pending disciplinary action.

3. The appellant was placed under suspension by the first respondent on 25.1.1999 pending disciplinary action against him. Alleging non payment of subsistence allowance, the appellant preferred PSA No.2/02 and 3/02 claiming subsistence allowance for two different periods. By order, dated 12.7.2002, the third respondent ordered a sum of Rs.12122/- in PSA.No.2/02 and Rs.53276/- in PSA No.3/02 to be payable by the first respondent to the appellant. Both the appellant and the first respondent preferred PAA Case No.5/02-1 and 5/02 before the second respondent. The second respondent also confirmed the order of the third respondent by his order, dated 24.2.2003.

4. Aggrieved against the same, the first respondent preferred W.P.No.10291 of 2003. The said writ petition was allowed by the learned Single Judge by applying the decision of another learned Single Judge reported in 2002 4 CTC 339. In the said decision, it was held that a Secretary in a Bank to which the Tamil Nadu Co-operative Societies Act, 1983 is applicable is an officer as defined in Section 2(19) of the said Act and therefore, he cannot be construed as an employee under the Tamil Nadu Payment of Subsistence Allowance Act. It was also held that since the Tamil Nadu Co-operative Societies Act,1983, is a special enactment, provisions of the Tamil Nadu Subsistence Allowance Act cannot be applied. Following the same, the impugned order was passed by the learned Single Judge allowing the writ petition of the first respondent and set aside the orders passed by the second and third respondents.

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5. Aggrieved against the same, the appellant has come forward with this writ appeal.

6. In this appeal, two questions arise for consideration, namely:-

a. whether the ratio laid down by the learned single Judge in the decision reported in 2002 (4) CTC 339 to the effect that the Tamil Nadu Co-operative Societies Act, 1983 is a special enactment and therefore, the Tamil Nadu payment of subsistence allowance Act will not be applicable to a Secretary, who has been defined as an officer under Section 2 (19) of the 1983 Act is proper or not.

b. If the Tamil Nadu payment of subsistence allowance Act applies, whether the first respondent can contend that the appellant will not fall under the definition of "employee" as defined under Section 2 (a) of the Tamil Nadu payment of subsistence allowance Act.

7. In order to clarify the above legal issues, we sought the assistance of the Additional Advocate General Mr.P.S.Raman, who made his submissions with absolute clarity highlighting the various intricate position involved and also placing before us the various decisions touching upon the very question. After referring to the provisions contained in Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981, (hereinafter called as Act 43 of 1981), and Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter called as Act 30 of 1983), which contains the respective definition clause of an "employee" and an "officer" under both the enactments referred to various decisions reported in AIR 1979 SC 1203(The Gujarat State Co-operative Land Devlopment Bank Ltd., Vs. P.R.Mankad and another), AIR 1980 SC 2181(The Life Insurance Corporation of India Vs. Bahadur and others), AIR 1970 SC 245(Co-operative Central Bank Ltd., and others etc. Vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.), AIR 1961 SC 1762 (Major E.G. Barsay Vs. State of Bombay), AIR 1966 SC 1931(Maharaja Pratap Singh Bahadur Vs. Thakuar Manmohan Dey and others), AIR 1968 SC 898(Board of Revenue for Rajasthan, Ajmer and others Vs. Rao Baldev Singh and others), AIR 1999 SC 3907(Gobind Sugar Mills Ltd. Etc., State of Bihar and others), AIR 2000 SC 1535(Allahabad Bank Vs.Canara Bank and another) and 2005(4) SC 613(V.M.Salgaocar and Brothers Vs. Board of Trustees of Port of Mormugao and another). Applying the ratio decidendi of the above referred to decisions, the learned Additional Advocate General contended that it will have to be held that in the context of the issue involved, namely, the claim for payment of subsistence allowance as against the first respondent, the 1983 Act would be a general statute and the 1981 Act should be construed as special enactment and consequently, it will have to be

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examined whether the appellant would come under the definition of 'employee' in order to maintain his claim under the 1981 Act. In other words, according to the learned Additional Advocate General, the claim of the appellant cannot be thrown out on the ground that the 1983 Act is a special enactment and therefore, 1981 Act will not be applicable to the claim of the appellant.

8. We also heard the learned counsel for the appellant as well as the first respondent.

9. To appreciate the submissions of the learned Additional Advocate General, we deem it appropriate to refer to the principles set out in the various decisions before rendering our conclusions.

10. Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 defines an employee to mean as under:

> Section 2(a): "employee" means any person employed in, or in connection with the work or activities of, any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical, clerical or any other kind of work or activities for hire or reward, whether the terms of employment be expressed or implied, but does not include any such person-
>
> Who is employed mainly in a managerial or administrative capacity; or
>
> Who, being employed in a supervisory capacity, draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature;"

11. In 1983 Act, an officer has been defined asunder under Section 2(19).

> "Section 2(19) : "Officer" includes a president, vice-president, managing director, secretary, assistant secretary, member of board and any other person empowered under the the Rules or the bye-laws to give directions in regard to the business of the registered society;"

12. In P.Ramanatha Aiyer's Advanced Law Lexicon, the maxim "Generalia specialibus non derogant" has been explained, wherein it is stated asunder:

> "Special Acts are not repealed by general Acts

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unless there be some express reference to the previous legislation, or a necessary inconsistency in the two Acts standing together, which prevents the maxim from being applied. The above principle has been set out in the decision of Harlow v. Minister of Transport, (1951) 2 KB 98."

13. By the order impunged in this writ petition, the learned single Judge by merely following the decision reported in 2002 (4) CTC 339 (The Management, T.P.Spl. 67 Goundanpalayam Primary Agricultural Cooperative Bank Ltd., by its President Goundanpalayam Kanzeyam via Erode District Vs. The Assistant Commissioner of Labour, The Authority under the Payment of Subsistence Allowance Act, Salem and another) allowed the writ petition.

14. In the said decision, paragraph 9, 10 and 12 are relevant for our present purpose which reads as under.

"9. Therefore, since the second respondent being the Secretary, is classified as an "officer" under the Tamil Nadu Cooperative Societies Act, 1983 which is applicable to him and therefore, there is no question of a second thought whether he could be again re-classified as an "employee" much less falling within the purview of the definition Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 which question will not arise at all. Therefore, basically, it has to be decided whether the second respondent is an "officer" defined under the definition Section 2(19) of the Tamil nadu Cooperative Societies Act, 1983 or a mere "employee" as defined under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981. Needless to mention that once the definition of "officer" as per the Tamil Nadu Cooperative Societies Act, 1983 is applicable to the second respondent, automatically, the other definition under Section 2(a) of the Tamil Nadu Payment of Subsistence Allowance Act, 1981 would not be attracted at all.

10. The second respondent, admittedly the Secretary of the petitioner Bank, squarely falls under the definition of "Officer" as defined under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 and he is bound by the Tamil Nadu Cooperative Societies Act and Rules and would not fall under any other Act, much less the Tamil Nadu Payment of Subsistence Allowance Act, 1981 as an "employee". The one and the same authority cannot be an "Officer" and an "employee", nor could he be taken both as an

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"Officer" for the purpose of Cooperative Societies Act and could be taken as an "employee" for the purpose of Tamil Nadu Payment of Subsistence Allowance Act, and therefore, since the second respondent having been the Secretary of the petitioner Bank and falling under the definition Section 2(19) of the Tamil Nadu Cooperative Societies Act, 1983 as an "Officer", he cannot be classified otherwise than this for any purpose much less for the purpose of Payment of Subsistence Allowance.

12. For all the above discussions held and the reasons assigned, the second respondent cannot be defined as an "employee" under the Tamil Nadu Payment of Subsistence Allowance Act, 1981 since he is an "Officer" as defined under the definition section 2 (19) of the Tamil Nadu Cooperative Societies Act, 1983 and as such he is not entitled to file an application before the first respondent herein so as to become entitled to get an order as passed by the said authority, which is impugned herein since the first respondent is ousted from assuming jurisdiction in such matters.

In result,

(i)the above writ petition succeeds and the same is allowed.

(ii)the order passed by the first respondent dated 29.6.1998 in Payment of Subsistence Allowance Case Nos.4 of 1998 and 13 of 1998 is quashed.

Consequently, W.P.M.P.24249 of 1998 is closed. However, in the circumstances of the case, there shall be no order as to costs."

15. The conclusion of the learned Judge in the above reported judgment was to the effect that once the secretary falls under the definition of an "officer" under Section 2(19) of the 1983 Act which according to the learned Judge is a special legislation, he cannot be further defined as an 'employee' under the 1981 Act since the 1983 Act is a special enactment having overriding powers on other general acts. Therefore, our primary concern is to examine whether such a conceptual conclusion of the learned single Judge can be accepted or not.

16. In order to arrive at correct legal position, it will be appropriate to examine various decisions of the Hon'ble Supreme Court on this aspect. In AIR 1979 SUPREME COURT 1203 (The Gujarat State Co-operative Land Development Bank Ltd., Vs. P.R.Mankad and

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another), a similar question came up for consideration. There, the legislations were Bombay Co-operative Societies Act 1925, vis-a-vis, Bombay Industrial Relations Act 1946. In paragraph 14 of the said judgment, based on the arguments of the learned counsel appearing for the Society, the Hon'ble Supreme Court summarise the contentions to be answered. Sub para IV to para 14 reads asunder.

> "(iv) Once it is held that the dispute between the Society and its past servant, Babu Bhai Negracha, touches the 'business' or the 'management' of the Society, or both, within the meaning of Section 96, the Registrar or his nominee, alone shall have jurisdiction to adjudicate such dispute by compulsory arbitration; and the non obstante clause in the section shall bar the determination of that dispute by the Industrial Tribunal or the Labour Court under the Bombay Industrial Relations Act."

17. While dealing with the said issue, the Hon'ble Supreme Court has stated the legal position as under in paragraph 29:-

> "29. The matter can be looked at from another angel also. The law of industrial disputes or industrial relations is a special law dealing with rights and obligations specially created by it. As against this, the provision in Section 54 of the Act of 1925/Section 96 of the Act of 1961 is a general provision. In accordance with the maxim generalia specialibus non derogant, therefore, nothing in these general provisions can derogate from B.I.R. Act and the Co-operative Society Act must yield to the special provisions in the Bombay Industrial Relations Act, whenever a dispute clearly comes within the language of the latter Act."

18. If what was stated in the above paragraph is relatable to the provisions of the 1981 Act, it will have to be held that 1983 Act would be a general legislation and the 1981 Act being a special enactment, 1981 Act alone will prevail.

19. In AIR 1980 Supreme Court 2181 (The Life Insurance Corporation of India Vs. D.J. Bahadur and others), the question arose as to whether the Life Insurance Corporation Act is a general enactment or special enactment compared with the provisions of the Industrial Disputes Act.

20. After analysing the various provisions of the LIC Act and the ID Act, the Hon'ble Supreme Court, has stated the legal position as under in paragraphs 30 and 31.

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"30. Be that as it may, as bird's eye view of the ID Act reveals the statutory structure and legal engineering centering round dispute settlement in industries according to the rule of law and away from fight with fists or economic blackmail. This large canvas once illumined may illustrate the sweep, of awards and settlements by reference to the very agreement of 1974 we have before us. It goes for beyond bonus and embraces a wide range of disputes and rainbow of settlements in a spirit of give and take . One may visualise the bargaining process. Give in a little on bonus and get a better deal on salary scale or promotion prospects; relent a wee-bit on hours of work but bargain better on housing facilities, and so on. The soul of the statute is not contract of employment, uniformity of service conditions or recruitment rules, but conscionable negotiations, conciliations and adjudications of disputes and differences animated by industrial justice, to avoid a collision which may spell chaos and imperil national effort at increasing the tempo of production.

31. If there is no dispute, the ID Act is out of bounds, while the LIC Act applies generally to all employees from the fattest executive to the frailest manual worker and has no concern with industrial disputes. The former is a 'war measure' as it were; the latter is a routine power when swords are not drawn if we may put it metaphorically. When disputes break out or are brewing, a special, sensitive situation fraught with frayed tempers and fighting postures springs into existence, calling for special rules of control, conciliatory machinery, demilitarising strategies and methods of investigation, interim arrangements and final solutions, governed by special criteria for promoting industrial peace and justice. The LIC Act is not a law for employment or disputes arising therefrom, but a nationalisation measure which incidentally, like in any general take-over legislation, provides for recruitment, transfers, promotions and the like. It is special vis-a-vis nationalisation of life insurance but general regarding contracts of employment or acquiring office buildings. Emergency measures are special, for sure. Regular nationalisation statutes are general even if they incidentally refer to conditions of service."

(Emphasis added)

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21. A reading of the above paragraphs goes to show that a statute can be construed as special when its main purport and object of the act is taken into account while at the same time when the application of the said Act is comparatively considered with a statute like the Industrial Dispute Act which out and out deals with employment, non-employment and conditions of labour in respect of an industry it would become a special enactment and that the maxim 'Generalia Specialibus non derogant' would apply and thereby would exclude the applicability of the other enactment on that basis.

22. In paragraphs 51 and 52 the Hon'ble Supreme Court has given certain guidelines as to how to find out whether a statute is a special or a general one, wherein it is stated as under:-

> "51. In determining whether a statute is a special or a general one, the focus must be on the principal subject matter plus the particular perspective. For certain purposes, an Act may be general and for certain other purposes it may be special and we cannot blur distinctions when dealing with finer points of law. In law, we have a cosmos of relativity not absolutes - so too in life. The ID Act is a special statute devoted wholly to investigation and settlement of industrial disputes which provides definitionally for the nature of industrial disputes coming within its ambit. It creates an infra-structure for investigation into, solution of and adjudication upon industrial disputes. It also provides the necessary machinery for enforcement of awards and settlements. From alpha to omega the ID Act has one special mission - the resolution of industrial disputes through specialised agencies according to specialised procedures and with special reference to the weaker categories of employees coming within the definition of workmen. Therefore, with reference to industrial disputes between employers and workmen, the ID Act is a special statute, and the LIC Act does not speak at all with specific reference to workmen. On the other hand, its powers relate to the general aspects of nationalisation, of management when private businesses are nationalised and a plurality of problems which, incidentally, involve transfer of service of existing employees of insurers. The workmen qua workmen and industrial disputes between workmen and the employer as such are beyond the orbit of and

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have no specific or special place in the scheme of the LIC Act. And whenever there was a dispute between workmen and management the ID Act mechanism was resorted to.

52. What are we confronted with in the present case, so that I may determine as between the two enactments which is the special? The only subject which has led to this litigation and which is the bone of contention between the parties is an 'industrial dispute between the Corporation and its workmen' qua workmen. If we refuse to be obfuscated by legal abracadabra and see plainly what is so obvious, the conclusion that flows, in the wake of the study I have made, is that vis-a-vis 'industrial disputes' at the termination of the settlement as between the workmen and the Corporation the ID Act is a special legislation and the LIC Act a general legislation. Likewise, when compensation on nationalisation is the question, the LIC Act is the special statute. An application of the generalia maxim as expounded by English text-books and decisions leaves us in no doubt that the ID Act being special law, prevails over the LIC Act which is but general law." (Emphasis added)

23. Again in paragraph 55, the Hon'ble Supreme Court has stated as under:-

"What is special or general is wholly a creature of the subject and context and may vary with situation, circumstances and angle of vision. Law is no abstraction but realises itself in the living setting of actualities. Which is a special provision and which general, depends on the specific problem, the topic for decision, not the broad rubric nor any rule of thumb. The peaceful co-existence of both legislations is best achieved, if that be feasible, by allowing to each its allotted field for play. Sense and sensibility, not mechanical rigidity gives the flexible solution.

.....To avoid absurdity and injustice by judicial servitude to interpretative literally is a function of the Court and this leaves me no option but to hold that the ID Act holds were disputes erupt and the LIC Act guides where other matters are concerned....These plural considerations lead me to the conclusion that the ID Act is a special statute when industrial disputes, awards and settlements are the topic of controversy, as here. There may be other matters where the LIC Act

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vis-a-vis the other statutes will be a special law. I am not concerned with such hypothetical situations now."

(Emphasis added)

24. In AIR 1970 Supreme Court 245 (Co-operative Central Bank Ltd. and others etc. Vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.) the question arose whether the Industrial Tribunal dealing with the dispute relating to conditions of service of employees of the Co-operative Society would be competent to alter any such condition which would conflict with bye-laws of the concerned Co-operative Society. In that context, the Hon'ble Supreme Court has stated as under in paragraph 10:-

"10. We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye-laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute. In respect of bye-laws laying down conditions of service of the employees of a society, the bye-laws would be binding between the society and the employees just in the same manner as conditions of service laid down by contract between the parties. In fact, after such bye-laws laying down the conditions of service are made and any person enters the employment of a society those conditions of service will have to be treated as conditions accepted by the employee when entering the service and will thus bind him like conditions of service specifically forming part of the contract of service. The bye-laws that can be framed by a society under the Act are similar in nature to the Articles of Association of a Company incorporated under the Companies Act and such Articles of Association have never been held to have the force of law. In a number of cases, conditions of service for industries are laid down by Standing Orders certified under the Industrial Employment (Standing Orders) Act, 1946, and it has been held that, though such Standing

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Orders are binding between the employers and the employees of the industry governed by these Standing Orders, they do not have such force of law as to be binding on Industrial Tribunal adjudicating an industrial dispute. The jurisdiction which is granted to Industrial Tribunal by the Industrial Disputes Act is not the jurisdiction of merely administering the existing laws and enforcing existing contracts. Industrial Tribunals have the right even to vary contracts of service between the employer and the employees which jurisdiction can never be exercised by a civil Court or a Registrar acting under the Co-operative Societies Act, so that the circumstance that, in granting relief on issue No.1, the Tribunal will have to vary the special bye-laws framed by the Co-operative Bank does not lead to the inference that the Tribunal wold be incompetent to grant the reliefs sought in this reference. In fact, the reliefs could only be granted by the Industrial Tribunal and could not fall within the scope of the powers of the Registrar dealing with a dispute under Section 61 of the Act.

(Emphasis added)

25. In the decision reported in 1961 Supreme Court 1762 (Major E.G. Barsay Vs. State of Bombay) the question arose as to whether the Special Judge constituted under Section 7 of the Criminal Law Amendment Act 1952, has jurisdiction to take cognizance of the offences with which the accused were charged under Section 6 of the Criminal Law Amendment Act.

26. Dealing with the said question, the Hon'ble Supreme Court after referring to the clause in 1952 Act, took the view that it did confer jurisdiction on the Special Judge to try persons committing such offences falling under the provisions of I.P.C. and the Prevention of Corruption Act. While setting forth the above legal position, the Hon'ble Supreme Court has stated as under in paragraph 22.

"22 .....That proposition of law may have some bearing when there is conflict of jurisdiction arising out of a general Act and a special Act without any specific exclusion of the jurisdiction in the general Act of that conferred under the special Act. But that principle may not have any relevance to a case where the general Act in express terms confers jurisdiction on a particular tribunal in respect of specified offences to the exclusion of anything contained in any other law. In such a

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situation, the intention of the Legislature is clear and unambiguous, and no question of applying any rule of interpretation would arise for the rules of interpretation are evolved only to ascertain the intention of the Legislature." (Emphasis added).

27. In AIR 1966 Supreme Court 1931 (Maharaja Pratap Singh Bahadur Vs. Thakuar Manmohan Dey and others) the question arose as between the provisions contained in the Ghatwali Lands Act, 1859 (Act 5 of 1859) and Court and Wards Act (Act 4 of 1870). Under Act 5 of 1989, the provision contained therein prescribed that the lease of Ghatwali land cannot be extended beyond the lifetime of the grantor. The said Act under Section (2) provided that in the case of Ghatwali land under the superintendence of Court of Wards lawfully if the Court of Wards or the Commissioner grant leases of the same for any of the purposes mentioned in the proviso thereto, in that event, such leases granted by the Court of Wards shall be binding on the future possessors of the said land.

28. The question arose whether the restriction imposed under the Court of Wards Act to the effect that the lease exceeding 10 years or beyond the period of expiration of ward's minority can be granted only with the sanction of the Board of Revenue. In that context, the Hon'ble Supreme Court stated the legal position as under in para 8:-

"(8) It is, therefore, clear that Act V of 1859 is a special statute and Act IV of 1870 is a general statute. The special statute does not make the sanction of the Board of Revenue a pre-condition for the validity of the lease executed by a Court of Wards so as to bind all future possessors of the said land, whereas S.9 of Act V of 1859 imposes such a condition. The argument is that both the Acts should be read together and if so read, the sanction of the Board of Revenue would also be a pre-condition in addition to the conditions imposed under the proviso to S.1 of V of 1859. In our view, such a contention is untenable. The principle of law in this regard is well settled. In Maxwell on the Interpretation of Statutes, the relevant principle is stated at p.168, thus:

"A general later law does not abrogate an earlier special one by mere implication. Generalia Specialibus non derogant, or in other words, "where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and

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special legislation indirectly repealed, altered, or derogated from merely by force of such general words, without any indication of a particular intention to do so. In such cases it is presumed to have only general cases in view, and not particular cases which have been already otherwise provided for by the Special Act."

If this principle is applicable to the instant case- we do not see any reason why it is not - the special provisions made under Act V of 1859 in regard to the conditions imposed for the validity of such a lease should prevail over those imposed under the general Act, Act IV of 1870. The general Act in regard to leases of Ghatwali lands should yield to the special Act. On this construction, the condition for the validity of the lease in question is that it should have been executed by the Court of Wards for the purpose of erection of dwelling houses. The lease of 1873 expressly states that the lease was granted for erecting dwelling houses."

(Emphasis added)

29. In AIR 1968 Supreme Court 898 (Board of Revenue for Rajasthan, Ajmer and others Vs. Rao Baldev Singh and others), the Hon'ble Supreme Court has stated the applicability of the maxim 'Generalia Specialibus non derogant' in the following words in paragraph 6.

" (6) .... The reason is that the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 is a special Act and the general maxim is that a subsequent General Act does not affect a prior special Act by implication - Generalia Specialibus non derogant- "When the legislature has given its attention to a separate subject and made provision for it the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms." (Barker V. Edger, 1898 AC 748)."

(Emphasis added)

30. In AIR 1999 Supreme Court 3097 (Gobind Sugar Mills Ltd etc., Vs. State of Bihar and others), the Hon'ble Supreme Court laid down principles as to how to determine the question whether a statute is a general or special one as under in paragraph 12:-

"12.While determining the question whether a Statute is a general or a special one, focus must be

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on the principal subject-matter coupled with particular perspective with reference to the intendment of the Act. Keeping in mind this basic principle, we will have to examine the provisions of the two Acts to find out whether it is possible to construe harmoniously the provisions of Section 4 of the Finance Act and Section 49 of the Sugarcane Act. If it is not possible then an effort will have to be made to ascertain whether the Legislature had intended to accord the levy on sugarcane a special treatment vis-a-vis the levy of purchase tax on other items, and a further endeavour will have to be made to find out whether Section 49 of the Sugarcane Act excludes the applicability of the levy under Section 4 of the Finance Act. On a perusal of the provisions of the above Acts including the objects of the two Acts, it could be seen that the two enactments in question contemplates levy of purchase tax. While the Finance Act empowers the State to levy all commercial taxes generally, the Sugarcane Act empowers the levy of purchase tax only on sugarcane. In this background, there can be no doubt that the Legislature intended to enact a special enactment for the purpose of levy of purchase tax with reference to sugarcane under the Sugarcane Act to the exclusion of such levy under the Finance Act. Once we come to the conclusion that this is the intention of the legislation then the rule "general provision should yield to special provision" is squarely attracted."

(Emphasis added)

31. In AIR 2000 Supreme Court 1535 (Allahabad Bank Vs. Canara Bank and another), under the heading Special Law Vs. General Law, the Supreme Court has stated how to identify a statute as a special Act as compared to another legislation which can be considered as special law. This position has been stated as under in paragraphs 39 and 40.

"39. There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statue vis-a-vis yet another legislation. Such situations do arise as held in Life Insurance Corporation of IndiaV. D.J. Bahadu, AIR 1980 SC 2181 : (1980 Lab IC 1218). It was there observed:

"for certain cases, an Act may be general and for certain other purposes, it may be special and the Court cannot blur a distinction when dealing with finer points of law."

For example, a Rent Control Act may be a

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special statute as compared to the Code of Civil Procedure, but vis-a-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in Damji Valji Shah v. Life Insurance Corporation of India ((1965) 3 SCR 665: AIR 1965 SC 135 already referred to), this Court has observed that vis-a-vis the LIC Act, 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from para 19 of that judgment. It was observed:

"Further, the provisions of the Special Act, i.e. LIC Act, will override the provisions of the general Act, viz., the Companies Act which is an Act relating to Companies in general."

Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.

Special law versus special law:

40. Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are tow special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, section 34. A similar situation arose in Maharashtra Tubes Ltd., Vs. State Industrial and Investment Corporation of India ((1993) 2 SCC 144: (1993 AIR SCW 991) where there was inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries Companies (Special Provisions) Act, 1985. The latter contained Section 32 which gave overriding effect to its provisions and was held to prevail over the former. It was pointed out by Ahmadi. J. that both special statutes contained non-obstante clauses but that the "1985 Act being a subsequent enactment, the non-obstante clauses but that the "1985 Act being a subsequent enactment, the non-obstante clause in section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one." Therefore, in view of section 34 of the RDB Act, the said Act overrides the Companies Act, to the extent there is anything inconsistent between the Acts."

32. From the extracts of the above decisions, the following principles emerge:-

a. In determining the question whether a

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statute is a special or general one, the focus must be on the principal subject matter plus particular perspective with specific reference to the intendment of the Act.

b. What is the special or general is wholly the creature of the subject and context and may vary with the situations, circumstances and angle of vision.

c. When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly.

d. For certain purposes, the Act may be general or for certain other purposes it may be special and one cannot blur distinction when dealing with the finer points of law.

e. The general later law does not abrogate an earlier special one by mere implication without any intention of a particular intention to do so.

33. Keeping the above principles in mind, when we examine the scope and object of the two enactments, namely, the Tamil Nadu Cooperative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) and Tamil Nadu Payment of Subsistence Allowance Act, 1981 (Act 43 of 1981), our conclusions are as under.

34. The Tamil Nadu Act 30 of 1983, as the Statement of Objects and Reasons go to show that the enactment was mainly meant to provide for orderly development of the Co-operative Movement in accordance with the Co-operative principles such as open membership, democratic management on very many purposes, such as for the promotion of thrift, self-help and mutual aid amongst persons with socio-economic needs in the field of agriculture, industry, business, service etc.

35. The present Act 30 of 1983 came into being in supersession of the earlier Act, namely, the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) which underwent several amendments and also after taking note of vast progress of the Co-operative movement which called for suitable modifications to achieve the objects of the Co-operative movement. The Act 30 of 1983 consists of 19 Chapters.

36. Chapter I is Preliminary of the Act containing two sections containing Short title and commencement, its application and coming into force of the Act apart from the definition clauses.

37. Chapter II, consists of Sections 3 to 20, dealing with

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the Registration of the Co-operative Society and the authorities prescribed for the purpose of registration. Apart from Registration, Division and amalgamation of Societies and other allied matters concerning the existence of the registered Co-operative Society are dealt with.

38. Chapter III, consists of Sections 21 to 31, dealing with the Qualification of Members and their Rights and Liabilities. Among other things, the provisions contained in the said Chapter also deals with the disqualification of the membership, rights of the members, their expulsion, the liabilities of the past members and deceased members.

39. Chapter IV, consists of Sections 32 to 36A, dealing with the Management of Registered Societies, such as holding of General Meetings, Meetings of the Board of Directors, Disqualification of the members of the board, their removal etc.

40. Chapter V, consists of Sections 37 to 51, dealing with the Duties and Privileges of Registered Societies. This Chapter starts from the address of Societies, finance management of the funds of the society, its shares, recovery of moneys due to the society as arrears of land revenue, exemption from compulsory registration of the instruments, stamp duty and registration fee etc. Section 48 falling under Chapter V relates to deduction from salary, wages or gratuity, i.e., a member may execute an agreement in favour of the society providing for deduction to be made from the salary or wages payable to him by his employer to meet the debt which he/she owes to the society.

41. Chapter VI, consists of Sections 52 to 65, dealing with the investment by Government in registered societies, Government approval for purchase of shares, restrictions on amount of dividend, and other forms of State Aid to Registered Societies. Section 65 specifically states that the provisions of Sections 53 to 63 shall have the effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

42. Chapter VII, consists of Sections 66 to 72, dealing with the Property and Funds of Registered Societies, such as restrictions on loans and borrowings, investment of funds, expenditure from funds, and disposal of net profits.

43. Chapter VIII, consists of Sections 73-79, dealing with Paid Officers and Servants of Society. Under the said chapter, the appointment of paid officers and servants, constitution of common cadre of service, suspension of paid officer or servant and their removal, coverage under the provident fund and gratuity fund are dealt with.

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44. Chapter IX, consists of Sections 80 to 89, dealing with Audit, Inquiry, Inspection and Investigation, Surcharge and Supersession of board.

45. Chapter X deals with the settlement of disputes under sole Section 90. Chapter XI also contains Section 91 dealing with the provision relating to order for winding up, division, amalgamation, etc., of insured cooperative Bank not to be made without sanction of the Reserve Bank of India.

46. Chapter XII, consists of Sections 92 to 102, dealing with Joint Farming Societies. Chapter XIII, consists of Sections 103 to 110, dealing with Lift Irrigation Societies. Chapter XIV, consists of 111 to 136, dealing with Agriculture and Rural Development Banks. Chapter XV, consists of Sections 137 to 142, dealing with the procedure for winding up and cancellation of registration of registered societies. Chapter XVI, consists of Sections 143 to 150, provides the provisions for execution of decrees, decisions, awards and orders.

47. Chapter XVII, consists of Sections 151 to 156, dealing with appeals, revision and review before the Tribunal exclusively set up for co-operative cases. Further, apart from the appeal from the orders of the Registrar, other remedies by way of review, revision etc. are also provided. Section 156 falling under Chapter XVII deals with the Bar of jurisdiction of civil Courts as regards the orders, awards, decisions or action taken under the said Act by an arbitrator, liquidator, registrar or an officer authorised or empowered by him or the Tribunal or the Government.

48. Chapter XVIII, consists of 157 to 166, which covers the issue relating to offences and penalties for violation of the provisions of the Act and other allied matters. Chapter XIX, consists of Sections 167 to 184, which have been set out under the head "Miscellaneous."

49. As stated earlier, the prime object of the enactment, namely, Act 30 of 1983, is for the organisation, registration, management, and supervision of Co-operative Societies in the State of Tamil Nadu. Certainly, the said Act does not mainly deal with the employer and employee relationship or their working or service conditions of employees in a broader perspective like the Industrial Dispute Act or other labour enactments.

50. Of the various Chapters dealing with the registration, membership, privileges of registered societies, the aid to be given by the State, maintenance of properties of the society, the audit of the funds of the society and the power of various

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authorities constituted under the societies Act, if at all any provision has been specifically provided for governing the service conditions of the employees, it is traceable to Chapter VIII which consists of Sections 73 to 79 of the Act. Section 73 stipulates that a registered society may appoint such paid officers and servants as are necessary for the efficient performance of the functions of the society. Section 74 talks of Constitution of recruitment bureaus by the State Government. Section 75 speaks of Constitution of common cadre of service in respect of the posts of Secretaries, Assistant Secretaries, Executive Officers, Assistant Executive Officers, General Managers, Assistant General Managers etc., which posts may be of requirement depending upon the nature of the society formed. Sub-section 3 to Section 75 provides for the constitution of a committee as competent authority to exercise the powers of suspension by way of punishment and it further directs that once such committee is constituted the registered society is denuded of its powers in respect of common cadre of service. In fact, for the matters specified in the said sub-section, under sub-section 5 and 6 provisions, appeal have been provided in regard to the orders passed by exercising the powers conferred under sub-section 3. Under sub-section 7, there is specific provision about non-application of Section 41 of the Tamil Nadu Shops and Establishments Act, 1947 to the common cadre employees. Section 76 deals with power of the Registrar to give directions either to the Committee or the Society to place a paid officer or servant of any registered society under suspension in the interest of the society when it was found that a paid officer or servant committed or has been otherwise responsible for misappropriation etc., in the course of audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 and the same was brought to the notice of the Registrar. Section 77 deals with the power of the Registrar to give directions in public interest for removal of any paid officer or servant by the competent authority. Sections 78 and 79 relate to the establishment of provident fund and for making a provision in the bye-laws for payment of gratuity if any of the registered society is not covered by the provisions of E.P.F. and payment of gratuity. One significant factor to be mentioned is that there is no non-obstante clause in Chapter-VIII providing for exclusion of any other enactment governing the conditions of labour or other matter covered by various provisions of this Chapter, in particular, as regards the payment of subsistence allowance during the period of suspension. Section 2(19), which defines 'officer', states that it would include the President, Vice President, Managing Director, Secretary, Assistant Secretary, Member of Board and any other person empowered under the Rules or the bye-laws to give directions in regard to the business of the registered society.

51. The contours of either Section 2(19) or other rights

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and obligations as provided under any of the provisions of Act 30 of 1983 in regard to an 'officer' if considered on the whole one can easily visualise that they are all in conjunction with the main purport of the enactment, namely, for the orderly development of the co-operative movement in accordance with the co-operative principles, and the main object of the Act itself is for the establishment of co-operative societies in the fields of agriculture, industry, housing, banking etc., to cater to the socio-economic needs of the common man. The conjoint consideration of the various provisions of the Act 30 of 1983 would reveal that they are mainly concerned with the establishment and effective management of co-operative societies in the respective fields for which such societies are established. The purport and intent of the said Act can never be held to be a piece of legislation meant for regulation or welfare or working conditions or service conditions of the paid officers or servants of the society.

52. Act 30 of 1983 may be special in so far as it concerns the promotion of Co-operative movement and the better administration of the Co-operative Societies of different fields which would be governed by the provisions of the said Act. But the question is whether such a special enactment meant for the better administration of a co-operative society can be still held to be a special one when it comes to the question of comparing the same with the Act 43 of 1981 which out and out pertains only for the payment of subsistence allowance to a suspended employee pending disciplinary action.

53. As stated earlier, there is no specific provision, unlike the provisions contained in the Industrial Disputes Act 1947 or the Factories Act, or the Contract of Labour(Regulation and Abolition) Act or the workmen compensation Act, or Act 43 of 1981 providing for payment of subsistence allowance, which deals exclusively with the manner in which the service conditions of the workmen in an industry or to regulate workforce employed on contract basis or the payment of compensation in the event of employee sustaining injury as also the payment of subsistence allowance in the event of suspension of an employee pending disciplinary proceedings. Even though, power is available under Section 75(3) of the Act to the committee constituted by the State Government in respect of common cadre employees to place an employee under suspension, there is no specific provision stipulating as to in what manner the period of such suspension should be dealt with when it comes to the question of payment of subsistence allowance.

54. It is true that invariably, when bye-laws are framed provisions are also made for payment of subsistence allowance to a suspended employee. We will separately deal with the scope and ambit of the applicability of the provisions contained in the bye-laws

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vis-a-vis any other statutory provision in the later part of our order. However, at this juncture, we wish to make it clear that any provision contained in the bye-laws of any registered society cannot have over-riding effect over a statutory provision dealing with a specific matter.

55. In that context, when Act 43 of 1981 is considered, a perusal of statements of objects and reasons disclose that the Act came into being in the background of a report to the State Government that very many industrial establishments governed by the provisions of the Standing Orders Act, which did not provide for payment of subsistence allowance to employees during the period of their suspension. It is further stated that several representations were received to incorporate a clause in the Model Standing Orders to provide for payment of subsistence allowance, or otherwise, to introduce a separate legislation to make it obligatory on the part of the management to pay subsistence allowance during the period of suspension of an employee. The Act came to be introduced with the above said objective. The Act contains 13 Sections which received the assent of the President on 21.7.1981. Section 2 is the definition clause which defines an "employee", "employer", "establishment", "industry", "period of suspension", "suspension" and "wages". Section 2(a) is the definition clause of "employee". As far as the definition of "establishment" under Section 2(c) is concerned, it means any place where any industry, trade, business, undertaking, manufacture, occupation of service is carried on and with respect to which executive power of the State Government extends but excludes any office or department of the Central or the State Government or railway administration or any mine or oil field or any major port or any public sector undertaking of the Central Government.

56. What is a "public sector undertaking" has been further explained under explanation to the said sub clause 2(c). The definition of 'industry' under Section 2(e) has been bodily lifted from Section 2(j) of the Industrial Disputes Act, 1947. Similarly, the definition of 'wages' under Section 2(h) has been bodily lifted from 2(rr) of the Industrial Disputes Act, 1947. Section 3 stipulates the manner as to how and for what period and at what rate, the payment of subsistence allowance to be paid to an employee who is placed under suspension pending disciplinary action. Section 4 provides for the manner in which the subsistence allowance ordered has to be recovered from an employer. Section 5 is the saving clause safeguarding any better or favourable right or privilege provided to an employee under any other enactment. Under Section 6, power is vested with the State Government to grant exemption subject to certain conditions from the operation of all or any of the provisions of the Act. Section 7 empowers the Government to delegate its powers to any authority to exercise all or any of the powers vested with it under the Act. Section 8 gives protection of action taken under

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the Act in good faith by stipulating that no suit or other legal proceedings would lie against the government or damage caused or likely to be caused by virtue of action taken under the Act. Section 9 is the penal provision and Section 10 provides for right of an occupier or manager to claim exemption from liability in certain cases. While Section 11 deals with cognizance of offences, Section 12 talks of the rule making power of the State Government. Section 13 stipulates that all rules made under the Act are to be placed before the legislature for its approval in order to make them applicable by virtue of Section 12 of Act 43 of 1981. The State Government also framed Tamil Nadu Payment of Subsistence Allowance Rules prescribing the procedure for an employee to make an application before the concerned authority to claim subsistence allowance from the employer and the manner in which such application to be dealt with. It also contains provisions for an appeal as against the order of the original authority by an aggrieved party.

57. A consideration of different provisions contained in the Act and rules makes it abundantly clear that the said Act exclusively deals with payment of subsistence allowance and whoever falls within the definition of employer, establishment and industry as defined under Section 2(b), (c) and (e) would be governed by the provisions of the said Act. Similarly, whoever falls within the definition of 'employee' as defined under Section 2(a) would be entitled to receive the subsistence allowance for the period of suspension pending disciplinary proceedings.

58. When we examine the definition of 'establishment' under Section 2(c) of the Act, there can be no two opinion that any co-operative society would fall within the said definition as it is well settled that the meaning of an "industry" as defined under Section 2(e) of the Act means any place where any trade, business, occupation of service is carried on. Significantly the excluded establishments under Section 2(c) of the Act does not include any co-operative society. Therefore, Act 43 of 1981 would automatically apply to any co-operative society constituted under the provisions of the Act 30 of 1983. The only other requirement would be that whoever wants to invoke the provisions of the Act 43 of 1981 to claim payment of subsistence allowance should satisfy the definition of "employee" as defined under Section 2(a) of the Act.

59. Having regard to the main purport and intent of Tamil Nadu Act 43 of 1981 we can safely conclude that the said Act exclusively deals with the payment of subsistence allowance and none else. Though it can be stated that Act 30 of 1983 having regard to its purport and intent, namely, for the orderly development of the co-operative movement in different fields, it is a special enactment in that respect, when it comes to the question of

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comparing the said Act with Act 43 of 1981 it will have to be held that the said Act, namely, Act 43 of 1981 being a special enactment dealing only with payment of subsistence allowance, and having regard to its origin being earlier in point of time and by virtue of the application of the maxim 'Generalia Specialibus Non Derogant', the special Act would by necessary implication will have over riding effect on the general Act, namely, Act 30 of 1983. We say so because, though a detailed reference to the various provisions of Act 30 of 1983 disclose that the said Act is mainly meant to regulate proper establishment of a co-operative society and its management and administration after such establishment, the provisions relating to regulation of service conditions of the officers and employees are purely incidental and the said Act 30 of 1983 is not primarily meant for the regulation of the service conditions of the officers and employees of the co-operative society. It also does not specifically deal with the detail procedure as regards to suspension of an employee with particular reference to the period, wages and any other condition, in the course of his employment in any co-operative society.

60. In fact, under Section 75 of the Act, though there is a provision providing for suspension of an employee, there is no specific provision as regards the manner in which an employee placed under suspension pending enquiry is to be dealt with. To be more specific, there is no provision in the Act providing for the manner in which payment of subsistence allowance has to be made during the period of suspension pending enquiry. Whereas under Act 43 of 1981 what is left out in the Act 30 of 1983 has been specifically taken care of, namely, the payment of subsistence allowance in respect of an "industrial establishment" which term takes within its fold even a registered co-operative society governed by the provisions of Act 30 of 1983. Therefore, when it comes to the question of payment of subsistence allowance, it can be safely held that Act 43 of 1981 being a special legislation on the subject would alone govern and in that respect Act 30 of 1983 would become a general enactment, having regard to the applicability of the maxim 'Generalia Specialibus Non Derogant'. When we approach this issue from the other angle as to whether there is any specific provision in the Act 30 of 1983 by way of non-abstante clause, it will have to be held that there is no such specific provision which would exclude the applicability of the Act 43 of 1981 to any co-operative society. In this context, when we apply the decision of the Hon'ble Supreme Court reported in AIR 1961 Supreme Court 1762(Major E.G.Barsay Vs. State of Bombay) having regard to the fact that there is no non obstante clause in the Act 30 of 1983 and by virtue of the fact that the Act 43 of 1981 being special enactment earlier in point of time Act 43 of 1981 alone would prevail.

61. One other aspect, which is also to be examined is that

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there are provisions in the bye-laws of the co-operative society which provides for payment of subsistence allowance. As far as the applicability of the bye-laws are concerned, having regard to the categoric decision of the Hon'ble Supreme Court reported in AIR 1970 Supreme Court 245 (Co-operative Central Bank Ltd., and others etc. Vs. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.) that bye-laws of a co-operative society framed in pursuance of the provisions of the Act cannot be held to have the force of law, it will have to be held that the same would not in any way impinge upon the specific provision contained under the Act 43 of 1981 providing for payment of subsistence allowance. In fact the Hon'ble Supreme Court in the said decision, apart from stating that the same has no statutory force also held that such bye-laws of the society are similar in nature to the Articles of Association of a company incorporated under the Companies Act and therefore, it has no force of law. Similarly, comparison was also made with the Standing Orders under the Industrial Employment Standing Orders Act, where again, it was held that though such Standing Orders are binding on the employer and employee of an industry, they do not have the force of law. Therefore, when it is well settled that bye-laws of the co-operative society have no force of law, the same cannot stand the scrutiny when it comes to the question of applicability of Act 43 of 1981. We are therefore, of the firm view that Act 43 of 1981 being a special enactment specifically enacted to deal with the payment of subsistence allowance during the period of suspension pending enquiry, which act being earlier in point of time as compared to the Act 30 of 1983 which should be construed as a general enactment in the present context, Act 43 of 1981 alone would prevail.

62. As far as the definition of an 'officer' under Section 2(19) of the Act 30 of 1983 is concerned, the same does not in any manner conflict with the provisions contained under Act 43 of 1981 even though the applicability of the said Section in the context of various other provisions contained in Act 30 of 1983 will definitely hold good. The construction of the said provision, compared with the definition of an 'employee' under Section 2(a) of Act 43 of 1981, it can be safely held that there is no necessity to examine the combined effect of both the provisions. There can be no difficulty in examining the question whether a person falling within the term 'officer' as defined under Section 2(19) of the Act 30 of 1983 would fall within the definition of 'employee' as defined under Section 2 (a) of the Act 43 of 1981. If such an exercise is independently carried out, while dealing with an application preferred under the Act 43 of 1981, there is no question of any conflict arising there from. Therefore, the statement of law as stated by the learned single Judge in the decision reported in 2002(4) CTC 339 (The Management, T.P.Spl.67 Goundanpalayam Primary Agricultural Co-operative Bank Ltd., by its President, Goundanpalayam Kangeyam via Erode District Vs. The Assistant Commissioner of Labour, The Authority under the Payment of

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Subsistence Allowance Act, Salem and another) was wholly unnecessary. When the status of an employee is defined under Section 2(a) of the Act 43 of 1981, it can be independently examined irrespective of such a person falling within the definition of 'officer' under Section 2 (19) of the Act 30 of 1983. Therefore, there is no gainsaying that the definition under Section 2(19) of the Act 30 of 1983 would make the Act 43 of 1981 itself inapplicable. In view of the above, we are unable to subscribe to the said view of the learned Single Judge having regard to our detailed analysis made in the earlier paragraphs, where the said features of Act 43 of 1981 and by virtue of the said position, the same would reign the field in derogation of the Act 30 of 1983, which is a general enactment. Having regard to our above conclusion, we overrule the judgment reported in 2002(4) CTC 339 (The Management, T.P.Spl.67 Goundanpalayam Primary Agricultural Co-operative Bank Ltd., by its President, Goundanpalayam Kangeyam via Erode District Vs. The Assistant Commissioner of Labour, The Authority under the Payment of Subsistence Allowance Act, Salem and another).

63. Therefore, applying the various guidelines set out in the decisions of the Hon'ble Supreme Court referred to above, we are convinced that on a construction of the principal subject matter as well as particular perspective of both the enactments, we have no hesitation in holding that the Act 30 of 1983 is a general enactment while Act 43 of 1981 is a special enactment. In the light of our conclusion as above, the writ appeal deserves to be allowed and the orders of the learned Single Judge impugned in this appeal has to be set aside. However, the mere applicability of the Act 43 of 1981 by itself would not straightaway entitle the appellant to claim that his application as allowed by the respondents 2 and 3 are to be sustained.

64. Though as held by us, the appellant is entitled to invoke the provisions of the Act 43 of 1981 to claim subsistence allowance for the period of suspension pending enquiry, the same would be subject to the appellant satisfying the position that he would fall within the definition of an 'employee' as defined under Section 2(a) of the Act 43 of 1981. The first respondent herein, in his counter statement before the second and third respondents has specifically raised a plea that being a Secretary-in-charge, the appellant would not fall within the definition of an employee in stricto senso.

65. Unfortunately, neither the third respondent nor the second respondent have ventured to deal with the said issue in the proper manner. Therefore, even while holding that the appellant is entitled to invoke the provisions of the Act 43 of 1981 and while setting aside the order of the learned single Judge, we have no hesitation in setting aside the orders of the second and third

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respondents impugned in the writ petition and remit the matter back to the third respondent to take up the application of the appellant in PSA No.2 and 3 of 2002 and decide the same after giving a specific finding as to the question whether the appellant falls within the definition of an 'employee' as defined under the Section 2(a) of Act 43 of 1981 and in the event of the third respondent reaching a conclusion that the appellant satisfies the definition of an 'employee' he would be free to pass orders as to the question of subsistence allowance, if any, payable to the appellant.

66. We also hasten to add that the third respondent is not expected to decide the issue relating to the status of the appellant whether he is an employee or not as a preliminary issue. In other words, the said issue shall be dealt with along with the merits of the claim of the appellant. But, however, it is made clear that the issue relating to the status of the appellant as an employee shall be tried as the first issue along with other issues. We reiterate that there should not be any piecemeal trial of the proceedings.

67. The Writ Appeal stands allowed and the Writ Petition is also ordered with the above directions. No costs. Connected W.A.M.Ps. are closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

RNB

To

1.The Special Officer
S.390, Pothanoor Primary Agricultural
Cooperative Bank Ltd.,
Pothanoor, Paramathivelur Taluk
Namakkal District 638 181.

2.The Appellate Authority under the
Payment of Subsistence Allowance Act/
Deputy Commissioner of Labour
Salem-7.

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3.The Authority under
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